

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	)	
Clifton E. Lind et al.	)	
	)	Group Art Unit: 3713
Serial No.: 10/643,189	)	
	)	
Filed: August 18, 2003	)	Examiner: Binh An Duc Nguyen
	)	
FOR: DYNAMICALLY CONFIGURABLE	)	
<u>GAMING SYSTEM</u>	)	Confirmation No.: 3668

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**APPEAL BRIEF**

This is an appeal from the Final Office Action mailed September 25, 2006 (the "Final Office Action"), in the above-identified patent application. Appellants submit this Appeal Brief to the Board of Patent Appeals and Interferences within the second month following the two-month period after the Notice of Appeal filed December 26, 2006. A petition for a two-month extension of time is submitted herewith together with the appropriate extension fee.

The fee of \$250.00 due under 37 C.F.R. §41.20(b)(2) is being submitted with this Appeal Brief.



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1                   **I. REAL PARTY IN INTEREST (37 C.F.R. §41.37(c)(1)(i))**

2                   The above-described patent application is assigned to Multimedia Games, Inc., the real  
3 party in interest.  
4

5                   **II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §41.37(c)(1)(ii))**

6                   There is no related Appeal or Interference before the United States Patent and Trademark  
7 Office.  
8

9                   **III. STATUS OF CLAIMS (37 C.F.R. §41.67(c)(1)(iii))**

10                  The status of the claims is as follows:

11                  Claims Allowed:	None
12                  Claims Objected To:	None
13                  Claims Canceled:	1 through 24
14                  Claims Rejected:	25 through 42
15                  Claims Appealed:	25 through 42

16  
17                  **IV. STATUS OF AMENDMENTS (37 C.F.R. §41.37(c)(1)(iv))**

18                  There have been no claim amendments filed subsequent to the Final Office Action mailed  
19 September 25, 2006.



1           **V. SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. §41.37(c)(1)(v))**

2           The appealed claims include six independent claims, claims 25, 32, 34, 39, 41 and 42.

3           The page number and line number references in this section refer to page and line numbers of the  
4           original specification unless expressly indicated otherwise.

5           Claim 25

6           Claim 25 is directed to a gaming system that includes a gaming machine (10) with a game  
7           presentation arrangement capable of producing a respective game presentation for any one of a  
8           number of different games (p. 11, lines 5-14 and p. 12, lines 7-9; Fig. 1; p. 18, lines 5-9; Fig. 2).  
9           The claimed gaming system also includes a player detecting arrangement, a player data collection  
10          arrangement, a system configuration arrangement, and a game modification controller (Fig. 3,  
11          reference nos. 58, 59, 51, and 50, respectively), each of which are defined in terms of the  
12          function or functions that they perform in accordance with 35 U.S. C. §112, ¶6. The player  
13          detecting arrangement (58, Fig. 3) is separate from the gaming machine (10) and functions to  
14          detect a player as the player traverses a gaming facility and approaches an area of the gaming  
15          facility in which the gaming machine is located. The structure for performing this player  
16          detecting function is described in the specification at page 26, lines 11-21 with reference to Fig. 4  
17          (note also p. 26, lines 1-3 as amended with the response filed June 28, 2006). The player data  
18          collection arrangement (59, Fig. 3) functions to store player preference information for the  
19          player, and the structure for performing this function is described in the specification at page 29,  
20          line 13 to page 31, line 10 and at page 31, line 18 to page 32, line 5. The system configuration  
21          arrangement (51, Fig. 3) functions to produce a system configuration command specifying a  
22          game presentation likely to be favored by the player based on the player preference information



1 for the detected player (p. 29, line 8 to p. 30, line 20 referring to the player preference tracking  
2 controller (57) component of the system configuration arrangement 51). The structure for  
3 performing this system configuration command function is described in the specification at page  
4 18, line 17 to page 19, line 4, with reference to Figure 3. The game modification controller (50,  
5 Fig. 3) is in communication with the system configuration arrangement (51) and with the gaming  
6 machine (10), and functions to receive the system configuration command from the system  
7 configuration arrangement and communicate presentation switching instructions to the gaming  
8 machine (p. 23, lines 18-21). These presentation switching instructions cause the gaming  
9 machine (10) to switch from a first game presentation to the game presentation likely to be  
10 favored by the player prior to an arrival of the player at the gaming machine (p. 22, lines 12-15;  
11 p. 27, lines 3-7). The structure for performing the game modification controller functions is  
12 described in the specification at page 18, line 10 to page 19, line 2, and page 20, line 13 to page  
13 21, line 7.

#### 14 Claim 32

15 Claim 32 is directed to a gaming system with a gaming machine (10, Fig. 1) that, similar  
16 to claim 25, includes a game presentation arrangement capable of producing a respective game  
17 presentation for any one of a number of different games (p. 11, lines 5-14 and p. 12, lines 7-9,  
18 Fig. 1, p. 18, lines 5-9, Fig. 2). Unlike claim 25, claim 32 also requires that the gaming machine  
19 (10) is located in a hotel room (p. 22, lines 6-9 and p. 31, lines 1-10). The gaming system set out  
20 in claim 32 further includes a player data collection arrangement (59, Fig. 3), a system  
21 configuration arrangement (51, Fig. 3), and a game modification controller (50, Fig. 3), each of  
22 which are described in terms of the function or functions they perform in accordance with 35



1 U.S.C. §112, ¶6. The player data collection arrangement (59) functions to detect that a person  
2 has been assigned to the hotel room in which the gaming machine (10) is located and to store  
3 player preference information for the person assigned to the hotel room (p. 31, lines 3-5). The  
4 structure for performing the player data collection arrangement functions is described in the  
5 specification at page 29, line 13 to page 31, line 10 and page 31, line 18 to page 32, line 5. The  
6 system configuration arrangement (58) functions to produce a system configuration command  
7 based on the player preference information for the person assigned to the hotel room, and the  
8 structure for performing this function is described in the specification at page 29, line 8 to page  
9 30, line 20. The game modification controller (50) is in communication with the system  
10 configuration arrangement (51) and with the gaming machine (10), and responds to the system  
11 configuration command by communicating presentation switching instructions to the gaming  
12 machine (p. 23, lines 18-21). The presentation switching instructions cause the gaming machine  
13 (10) to produce a game presentation specified by the presentation switching instructions. The  
14 structure for performing the game modification controller functions is described in the  
15 specification at page 18, line 10 to page 19, line 2, and page 20, line 13 to page 21, line 7.

16 Claim 34

17 Claim 34 is directed to a method of changing a first game presentation produced by a  
18 gaming machine (10) in a gaming facility. The method set out in claim 34 includes detecting a  
19 player as the player is traversing the gaming facility and is approaching an area in which the  
20 gaming machine (10) is located, the gaming machine having the capability of producing a  
21 respective game presentation for any one of a number of different games (p. 26, lines 11-21 with  
22 reference to Fig. 4). The method set out in claim 34 further includes retrieving stored player



1 preference information for the player (p. 29, line 8 to p. 31, line 10 and p. 31, line 18 to p. 32,  
2 line 5), and producing a system configuration command based on the retrieved player preference  
3 information for the player, the system configuration command specifying a second game  
4 presentation different from the first game presentation (p. 29, line 8 to p. 30, line 20). Claim 32  
5 further requires communicating presentation switching instructions to the gaming machine (10)  
6 in response to the system configuration command (p. 18, line 17 to p. 19, line 4 with reference to  
7 Fig. 3; and p. 23, lines 18-21), and changing from the first game presentation at the gaming  
8 machine to the second game presentation (p. 22, lines 12-14). This change in game presentations  
9 is performed in response to the presentation switching instructions and is performed prior to an  
10 arrival of the player at the gaming machine (p. 27, lines 3-7, p. 28, lines 17-19).

#### 11 Claim 39

12 Claim 39 is directed to a method of changing a game presentation produced by a gaming  
13 machine (10) in a gaming facility. Claim 39 requires detecting that a player has been assigned to  
14 a hotel room in which the gaming machine (10) is located (p. 22, lines 6-9 and p. 31, lines 1-10),  
15 and retrieving stored player preference information for the player (p. 29, line 8 to p. 30, line 20).  
16 Claim 39 further requires producing a system configuration command based on the retrieved  
17 player preference information for the player, the system configuration command identifying a  
18 game presentation likely to be favored by the player (p. 29, line 13 to p. 31, line 10 and p. 31, line  
19 18 to p. 32, line 5). Claim 39 also requires communicating presentation switching instructions to  
20 the gaming machine (10) in response to the system configuration command (p. 23, line 18-21),  
21 and changing from the game presentation at the gaming machine to the game presentation likely



1 to be favored by the player, the change from the game presentation being performed in response  
2 to the presentation switching instructions (p. 22, lines 12-15 and p. 27, lines 3-7).

3 Claim 41

4 Claim 41 is directed to a program product for configuring a gaming machine (10) having  
5 the ability to produce a respective game presentation for a number of different games. The  
6 program product set out in claim 41 includes system configuration program code that is  
7 executable for retrieving game preference information on a player that has been detected  
8 traversing a gaming facility toward an area of the gaming facility in which the gaming machine is  
9 located (p. 8, lines 8-9, p. 35, lines 9-17), and for producing a system configuration command  
10 specifying a game presentation likely to be favored by the player based on the retrieved game  
11 preference information on the player (p. 29, line 8 to p. 30, line 20). The program product set  
12 out in claim 41 further includes presentation switching program code that is executable for  
13 responding to the system configuration command by communicating presentation switching  
14 instructions to the gaming machine (p. 23, lines 18-21, p. 18, line 20 to p. 19, line 2). These  
15 presentation switching instructions are effective for causing the gaming machine (10) to switch  
16 from a first game presentation at the gaming machine to the game presentation likely to be  
17 favored by the player, where the switch occurs prior to an arrival of the player at the gaming  
18 machine (p. 22, lines 12-15 and p. 27, lines 3-7).

19 Claim 42

20 Claim 42 is also directed to a program product for configuring a gaming machine (10)  
21 having the ability to produce a respective game presentation for a number of different games.  
22 The program product set out in claim 42 requires system configuration program code that is



1 executable for retrieving game preference information on a player that has been assigned to a  
2 hotel room in which the gaming machine (10) is located (p. 8, lines 8-9, p. 31, lines 1-10, p. 35,  
3 lines 9-17), and for producing a system configuration command identifying a second game  
4 presentation based on the retrieved game preference information on the player (p. 22, lines 12-  
5 15). The program product set out in claim 42 also includes presentation switching program code  
6 which is executable for responding to the system configuration command by communicating  
7 presentation switching instructions to the gaming machine (10) (p. 23, lines 18-21, p. 18, line 20  
8 to p. 19, line 2). The presentation switching instructions are effective for causing the gaming  
9 machine (10) to switch from a first game presentation at the gaming machine to the second game  
10 presentation (p. 22, lines 12-15).

11  
12 **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**  
13 **(37 C.F.R. §41.37(e)(1)(vi))**

14 Claims 32, 33, 39, 40, and 42 stand rejected under 35 U.S.C. §102(e) as being anticipated  
15 by U.S. Patent Publication No. 2004/0166940-A1 to Rothschild (the "Rothschild reference or  
16 "Rothschild").

17 Claims 25 through 31, 34 through 38, and 41 stand rejected under 35 U.S.C. §103(a) as  
18 being unpatentable over the Rothschild reference in view of U.S. Patent No. 5,923,252 to Sizer et  
19 al. ("Sizer" or the "Sizer patent").



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VII. ARGUMENT (37 C.F.R. §41.37(e)(1)(vii))

A. CLAIMS 32, 33, 39, 40, AND 42 ARE NOT ANTICIPATED BY ROTHSCHILD

The Appellants respectfully submit that the anticipation rejections stated in the Final Office Action are in error because the Rothschild reference does not disclose each element required in claims 32, 33, 39, 40, and 42.

Claim 32

Claim 32 is directed to a gaming system and includes the following elements:

- (a) a gaming machine including a game presentation arrangement capable of producing a respective game presentation for any one of a number of different games, the gaming machine being located in a hotel room;
- (b) a player data collection arrangement **for detecting that a person has been assigned to the hotel room in which the gaming machine is located** and for storing player preference information for the person assigned to the hotel room;
- (c) **a system configuration arrangement for producing a system configuration command based on the player preference information for the person assigned to the hotel room; and**
- (d) a game modification controller in communication with the system configuration arrangement and with the gaming machine, the game modification controller **for responding to the system configuration command by communicating presentation switching instructions to the gaming machine, the presentation switching instructions causing the gaming machine to produce a game**



1                   **presentation specified by the presentation switching instructions.** (Emphasis

2                   Added)

3       The Appellants submit that there is no teaching or suggestion in Rothschild for elements (b), (c),  
4       and (d) of claim 32.

5               Before addressing elements (b), (c), and (d) of claim 32, the Appellants note an important  
6       interpretation error in the Final Office Action with respect to the gaming machine required at  
7       element (a) of claim 32. Specifically, the Final Office Action refers to elements 12 or 14 in  
8       Rothschild as gaming machines (Final Office Action, p. 2, lines 2-3 of final paragraph). The  
9       Final Office Action then goes on to cite paragraph 22 of Rothschild as disclosing a “gaming  
10      machine” capable of being located in a hotel room (Final Office Action, p. 2, lines 4-5 of final  
11      paragraph). The error with this interpretation is that paragraph 22 of Rothschild discusses only a  
12      user’s computing device 14 (portable or desktop computer, Internet appliance, etc.) which can be  
13      placed by the user in their hotel room. There is no suggestion in Rothschild that a gaming  
14      machine 12 may be placed in a hotel room. In fact, Rothschild specifically discloses that gaming  
15      machines 12 are located in one or more land-based casinos (Rothschild, ¶ 11). This fundamental  
16      error in the Final Office Action in referring to gaming machine 12 and user computing device 14  
17      interchangeably affects all of the remaining errors with respect to claim 32 as will be described  
18      further below.

19              The Final Office Action relies on the reference to a hotel/casino database 40c in  
20      paragraph 32 of Rothschild for teaching the limitation of element (b) of claim 32. However, the  
21      mere reference to a hotel/casino database 40c in Rothschild does not teach or suggest any player  
22      detecting arrangement for detecting that a person has been assigned to a given hotel room in



1 which a given gaming machine is located. This detection required in element (b) of claim 32 can  
2 occur only by recognizing that there is a specific gaming machine in a specific hotel room and  
3 that a person has been assigned to that specific hotel room. There is simply no suggestion of in  
4 the Rothschild reference (either in the cited paragraph 32 or elsewhere) of detecting that a person  
5 has been assigned to a hotel room in which a gaming machine 12 is located.

6 Even if one were to define a user's computing device 14 as a gaming machine as the Final  
7 Office Action appears to do, there is no suggestion in Rothschild of any arrangement for  
8 detecting when a person has been assigned to a hotel room in which the user's computing device  
9 14 is located. If fact, with respect to a person's own computing device, this inquiry regarding  
10 hotel room assignment becomes absurd. That is, it would be nonsensical in Rothschild to  
11 "detect" if a person has been assigned to a hotel room in which that person's computing device is  
12 located.

13 For all of these reasons, the Rothschild reference clearly does not disclose the limitation  
14 set out at element (b) of claim 32.

15 The Office Action cites paragraphs 22, 24, and 30 of Rothschild as disclosing a system  
16 configuration arrangement as required at element (c) of claim 32. The Appellants respectfully  
17 submit that nothing in Rothschild, including paragraphs 22, 24, and 30, teaches or suggests the  
18 system configuration arrangement required at element (c) of claim 32. Paragraph 22 of  
19 Rothschild simply describes variations for a computing device 14 through which games may be  
20 played in the disclosed system. Paragraph 24 of Rothschild states that players may be required to  
21 open an account to participate in games, and describes the various types of information that may  
22 be associated with such an account. Paragraph 30 of Rothschild simply indicates that a player



1 may enroll in a player tracking system at the casino and that certain data may be associated with  
2 the player through the player tracking system. The Final Office Action simply recites the claim  
3 limitation and broadly references paragraphs 22, 24, and 30 of Rothschild as disclosing that  
4 claim limitation, without specifically pointing to any part of the cited paragraphs which disclose  
5 a system configuration arrangement as required at element (c) of claim 32. However, the cited  
6 paragraphs do not disclose or even suggest element (c) of claim 32, that is, a system  
7 configuration arrangement for producing a system configuration command based on player  
8 preference information for a particular person that has been assigned to a particular hotel room in  
9 which a specific gaming machine is located.

10 The Final Office Action cites paragraph 31 of Rothschild as disclosing a game  
11 modification controller as required in element (d) of claim 32. The Appellants respectfully  
12 submit that nothing in Rothschild, including paragraph 31, teaches or suggests the game  
13 modification controller required at element (d) of claim 32. Paragraph 31 of Rothschild lists the  
14 various types of information and player preferences that may be provided by a player when the  
15 player enrolls in the casino's player tracking system. There is nothing in paragraph 31 or  
16 elsewhere in Rothschild that teaches or suggests a game modification controller for responding to  
17 a system configuration command by communicating presentation switching instructions to a  
18 gaming machine located in a particular hotel room as required by element (d) of claim 32.

19 The Appellants note the parenthetical comment in the Final Office Action "(setting player  
20 preference to [sic] gaming machine utilizing player game preference stored in the player tracking  
21 system, paragraph 31)" appearing at lines 11-12 of page 3 and repeated at lines 8-9 of page 7.  
22 First, the information at paragraph 31 of Rothschild does not disclose setting player preferences



1 at a gaming machine. However, even assuming for the purposes of argument that paragraph 31  
2 of Rothschild discloses setting player preference to a gaming machine utilizing player game  
3 preference stored in the player tracking system, this does not meet the limitation set out at  
4 element (d) of claim 32. That is, such a disclosure does not teach a game modification controller  
5 that responds to the system configuration command by communicating presentation switching  
6 instructions to the gaming machine in the hotel room.

7 Because the Rothschild reference does not teach each and every limitation set out in claim  
8 32, and specifically does not teach elements (b), (c), and (d), the Final Office Action rejection of  
9 claim 32 as being anticipated by Rothschild is in error and should be reversed.

10 Claim 39

11 Appellants' claim 39 is directed to a method of changing a game presentation produced  
12 by a gaming machine and requires the following method steps:

- 13 (a) detecting that a player has been assigned to a hotel room in which the gaming  
14 machine is located;
- 15 (b) retrieving stored player preference information for the player;
- 16 (c) producing a system configuration command based on the retrieved player  
17 preference information for the player, the system configuration command  
18 identifying a game presentation likely to be favored by the player;
- 19 (d) communicating presentation switching instructions to the gaming machine in  
20 response to the system configuration command; and
- 21 (e) changing from the game presentation at the gaming machine to the game  
22 presentation likely to be favored by the player, the change from the game



1 presentation being performed in response to the presentation switching  
2 instructions.

3 The Appellants respectfully submit that Rothschild does not teach or suggest any of these  
4 limitations. At the outset, the mere reference to a hotel/casino database in paragraph 32 of  
5 Rothschild does not teach or suggest detecting that a player has been **assigned to a hotel room**  
6 **in which a gaming machine is located** as required at element (a) of claim 39. Furthermore  
7 nothing in Rothschild suggests retrieving stored player preference information for the particular  
8 player that has been assigned to a hotel room in which a gaming machine is located, or producing  
9 a system configuration command for this player. Thus, Rothschild also does not teach the  
10 requirements of elements (b) and (c) of claims 39. Rothschild also does not suggest  
11 communicating presentation switching instructions to the gaming machine in the hotel room  
12 assigned to the player as required at element (d) of claim 39. Finally, nothing in Rothschild  
13 teaches or suggests changing a game presentation at the gaming machine in the assigned hotel  
14 room to a presentation likely to be favored by the player that has been assigned to the hotel room  
15 as required by element (e) of claim 39.

16 Claim 42

17 Claim 42 is directed to a program product that includes system configuration code that is  
18 executable for retrieving game preference information **for a player that has been assigned to a**  
19 **hotel room in which a gaming machine is located**, and for producing a system configuration  
20 command based on that retrieved information. As indicated above in connection with claims 32  
21 and 39, nothing in Rothschild suggests taking any action for a player that has been assigned to a  
22 hotel room in which a gaming machine is located. Thus, Rothschild cannot teach or suggest the



1 system configuration code required by element (a) of claim 42. Rothschild also does not suggest  
2 any presentation switching at a gaming machine located in a hotel room and thus cannot suggest  
3 the presentation switching program code required at element (b) of claim 42.

4 Because Rothschild does not disclose all of the elements required in claims 32, 39, 40,  
5 and 42, the anticipation rejection of these claims is in error and should be reversed, along with  
6 the anticipation rejection of dependent claims 33 and 40.

7  
8 **B. CLAIMS 25 THROUGH 31, 34 THROUGH 38, AND 41 ARE NOT OBVIOUS**  
9 **OVER ROTHSCHILD IN VIEW OF SIZER**

10 The Appellants respectfully submit that the Final Office Action rejection fails to make out  
11 a *prima facie* case of obviousness as to claims 25 through 31, 34 through 38, and 41, and  
12 therefore believe the rejection of these claims is in error. More particularly, the Appellants  
13 respectfully submit that the proposed combination of references fails to teach or suggest each  
14 element required in the claims.

15 The USPTO carries the initial burden of establishing a *prima facie* case of obviousness.  
16 In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785,787-88 (Fed. Cir. 1984). To establish  
17 *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or  
18 suggested by the prior art. See In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580, 583 (CCPA 1974).

19 As indicated in the Final Office Action at the bottom three lines of page 4 and top two  
20 lines of page 5, the Rothschild reference does not teach any element for detecting a player as the  
21 player traverses the gaming facility and approaches the area of the gaming facility in which the  
22 gaming machine is located (as required at element (b) of claim 25 and element (a) of claim 34).



1 This portion of the Final Office Action also indicates that Rothschild does not teach any element  
2 for switching the game presentation at the gaming machine prior to an arrival of the player at the  
3 gaming machine (as required at element (e) of claim 25, element (e) of claim 34, and element (b)  
4 of claim 41.) The Final Office Action relies on the Sizer patent for suggesting these elements  
5 missing from Rothschild.

6 The Sizer patent is directed to a marketing device that detects the presence of a person  
7 within a detection area (such as an area proximate to a product to be marketed) and then delivers  
8 a marketing message to the detected person if it is determined that it is appropriate to deliver the  
9 marketing message (Sizer at Abstract, lines 1-8 and col. 8, lines 21-30). Sizer discloses that the  
10 marketing message is only delivered when a person is there to receive it (Sizer at col. 5, lines 40-  
11 49 and col. 13, lines 29-30, for example). Nothing in the Sizer patent suggests any arrangement  
12 for switching a game presentation at a gaming machine.

13 Even if one were to combine the teachings of Rothschild and Sizer as proposed in the  
14 Final Office Action, the resulting combination would fail to include or suggest any element for  
15 switching the game presentation at the gaming machine prior to an arrival of the player at the  
16 gaming machine. As noted above, the Final Office Action concedes that Rothschild does not  
17 disclose any element for switching the game presentation at a gaming machine prior to an arrival  
18 of the approaching player at the gaming machine. Sizer also fails to teach or suggest any element  
19 for switching a game presentation at a gaming machine prior to an arrival of an approaching  
20 player. Because neither reference of the proposed combination of Rothschild and Sizer teaches  
21 or suggests the limitation required at element (e) of claim 25, element (e) of claim 34, and  
22 element (b) of claim 41, namely, the function or step of switching a game presentation at a



gaming machine prior to an arrival of an approaching player, the combination of these references also cannot teach or suggest the element.

The Final Office Action provides the following rationale for combining Rothschild and Sizer.

It would have been obvious to a person of ordinary skill in the art at the time of the invention was [sic] made to provide the wireless detection system of Sizer et al. to the gaming network of Rothschild to instantly detect game player [sic] in the area to provide gaming advertisement to the player faster and more effective [sic] that [sic] would attract more game players to play game [sic], thus bring forth profits to the casino. (Final Office Action, p. 5, lines 8-13)

However, claims 25, 34, and 41 do not require providing gaming advertisement to a player.

Rather, element (e) of claim 25 requires:

a game modification controller in communication with the system configuration arrangement and with the gaming machine, the game modification controller for receiving the system configuration command from the system configuration arrangement and for communicating presentation switching instructions to the gaming machine, **the presentation switching instructions causing the gaming machine to switch from a first game presentation to the game presentation likely to be favored by the player prior to an arrival of the player at the gaming machine.** (Emphasis added)

Element (e) of claim 34, and element (b) of claim 41 each require similar limitations in the context of a method and program product, respectively.

Simply providing an advertising message as disclosed in Sizer, even if it is a gaming advertisement, does not amount to switching from one gaming machine game presentation to another at any point in time, and certainly not prior to an arrival of the player at the gaming machine.

Furthermore, the Appellants note that the Sizer patent discloses only taking some action at the location at which the marketing target is located. Namely, Sizer discloses delivering a



1 marketing message to the detected person in the detection area (Sizer at col. 10, lines 44-47).  
2 Sizer does not suggest taking any action at a location other than where the marketing target is  
3 located. Thus, Sizer could not suggest switching a game presentation at a gaming machine **prior**  
4 **to an arrival of the player at the gaming machine.**

5 For all of these reasons the Appellants submit that the proposed combination of  
6 Rothschild and Sizer fails to teach or suggest each element required in claims 25, 34, and 41, and  
7 thus that the rejections under 35 U.S.C. §103(a) are in error.  
8

#### 9 VIII. CONCLUSION

10 For all of these reasons, the Appellants submit that the rejections set forth in the Final  
11 Office Action are in error, and that claims 25 through 42 are entitled to allowance. The  
12 Appellants therefore respectfully request that the Board reverse the Final Office Action rejecting  
13 claims 25 through 42.

14 Respectfully submitted,

15 The Culbertson Group, P.C.  
16

17  
18  
19 Date: 27 March 2009

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IX. APPENDIX A

CLAIMS INVOLVED IN THE APPEAL (37 C.F.R. §41.37(c)(1)(viii))

1 - 24 Canceled

25. A gaming system including:

- (a) a gaming machine including a game presentation arrangement capable of producing a respective game presentation for any one of a number of different games;
- (b) a player detecting arrangement separate from the gaming machine for detecting a player as the player traverses a gaming facility and approaches an area of the gaming facility in which the gaming machine is located;
- (c) a player data collection arrangement for storing player preference information for the player;
- (d) a system configuration arrangement for producing a system configuration command specifying a game presentation likely to be favored by the player based on the player preference information for the detected player; and
- (e) a game modification controller in communication with the system configuration arrangement and with the gaming machine, the game modification controller for receiving the system configuration command from the system configuration arrangement and for communicating presentation switching instructions to the gaming machine, the presentation switching instructions causing the gaming



1 machine to switch from a first game presentation to the game presentation likely  
2 to be favored by the player prior to an arrival of the player at the gaming machine.  
3

4 26. The gaming system of claim 25 wherein the player detecting arrangement includes a  
5 player location determining arrangement for determining the location of the player in the  
6 gaming facility in which the gaming machine is located.  
7

8 27. The gaming system of claim 26 wherein the player carries an identifying device and  
9 wherein the player location determining arrangement includes a reading device for  
10 remotely reading identifying information from the identifying device.  
11

12 28. The gaming system of claim 26 wherein the player carries an identifying device and  
13 wherein the player location determining arrangement includes a receiver device for  
14 remotely receiving identifying information transmitted from the identifying device.  
15

16 29. The gaming system of claim 26 wherein the player carries a transponder transmitting a  
17 player identifying signal, and wherein the player location determining arrangement  
18 includes a receiving arrangement for determining the location of the player based upon  
19 the player identifying signal.  
20



- 1 30. The gaming system of claim 25 wherein the player detecting arrangement detects the  
2 player by reading information associated with a player card which is usable by the player  
3 in the gaming facility in which the gaming machine is located.  
4
- 5 31. The gaming system of claim 25 wherein the area of the gaming machine is located in a  
6 hotel room and wherein the player detecting arrangement detects the player through a  
7 check-in procedure for the hotel room.  
8
- 9 32. A gaming system including:
- 10 (a) a gaming machine including a game presentation arrangement capable of  
11 producing a respective game presentation for any one of a number of different  
12 games, the gaming machine being located in a hotel room;
- 13 (b) a player data collection arrangement for detecting that a person has been assigned  
14 to the hotel room in which the gaming machine is located and for storing player  
15 preference information for the person assigned to the hotel room;
- 16 (c) a system configuration arrangement for producing a system configuration  
17 command based on the player preference information for the person assigned to  
18 the hotel room; and
- 19 (d) a game modification controller in communication with the system configuration  
20 arrangement and with the gaming machine, the game modification controller for  
21 responding to the system configuration command by communicating presentation  
22 switching instructions to the gaming machine, the presentation switching



instructions causing the gaming machine to produce a game presentation specified by the presentation switching instructions.

33. The gaming system of claim 32 wherein the player data collection arrangement detects that the person has been assigned to the hotel room by receiving room check-in information.

34. A method of changing a first game presentation produced by a gaming machine in a gaming facility, the method including:

- (a) detecting a player as the player is traversing the gaming facility and is approaching an area in which the gaming machine is located, the gaming machine having the capability of producing a respective game presentation for any one of a number of different games;
- (b) retrieving stored player preference information for the player;
- (c) producing a system configuration command based on the retrieved player preference information for the player, the system configuration command specifying a second game presentation different from the first game presentation;
- (d) communicating presentation switching instructions to the gaming machine in response to the system configuration command; and
- (e) changing from the first game presentation at the gaming machine to the second game presentation, the change being in response to the presentation switching



1 instructions and being performed prior to an arrival of the player at the gaming  
2 machine.  
3

4 35. The method of claim 34 wherein the new game presentation includes an attract display  
5 tailored for the respective player.  
6

7 36. The method of claim 34 wherein detecting the player includes receiving a transponder  
8 signal transmitted from a transponder carried by the player.  
9

10 37. The method of claim 34 wherein detecting the player includes remotely reading an  
11 identification device carried by the player.  
12

13 38. The method of claim 34 wherein the gaming machine is located in a hotel room and  
14 wherein detecting the player includes receiving room check-in information.  
15

16 39. A method of changing a game presentation produced by a gaming machine in a gaming  
17 facility, the method including:

18 (a) detecting that a player has been assigned to a hotel room in which the gaming  
19 machine is located;

20 (b) retrieving stored player preference information for the player;



- (c) producing a system configuration command based on the retrieved player preference information for the player, the system configuration command identifying a game presentation likely to be favored by the player;
- (d) communicating presentation switching instructions to the gaming machine in response to the system configuration command; and
- (e) changing from the game presentation at the gaming machine to the game presentation likely to be favored by the player, the change from the game presentation being performed in response to the presentation switching instructions.

40. The method of claim 39 wherein detecting that the player has been assigned to the hotel room includes receiving room check-in information.

41. A program product for configuring a gaming machine having the ability to produce a respective game presentation for a number of different games, the program product being stored on a computer readable medium and including:

- (a) system configuration program code executable for retrieving game preference information on a player that has been detected traversing a gaming facility toward an area of the gaming facility in which the gaming machine is located, and for producing a system configuration command specifying a game presentation likely to be favored by the player based on the retrieved game preference information on the player; and



(b) presentation switching program code executable for responding to the system configuration command by communicating presentation switching instructions to the gaming machine, the presentation switching instructions being effective for causing the gaming machine to switch from a first game presentation at the gaming machine to the game presentation likely to be favored by the player, the switch occurring prior to an arrival of the player at the gaming machine.

42. A program product for configuring a gaming machine having the ability to produce a respective game presentation for a number of different games, the program product being stored on a computer readable medium and including:

- (a) system configuration program code executable for retrieving game preference information on a player that has been assigned to a hotel room in which the gaming machine is located, and for producing a system configuration command identifying a second game presentation based on the retrieved game preference information on the player; and
- (b) presentation switching program code executable for responding to the system configuration command by communicating presentation switching instructions to the gaming machine, the presentation switching instructions being effective for causing the gaming machine to switch from a first game presentation at the gaming machine to the second game presentation.



**X. APPENDIX B**

**EVIDENCE APPENDIX (37 C.F.R. §41.37(c)(1)(ix))**

The Appellants have not relied upon any evidence in this appeal according to 37 C.F.R. §41.37(c)(1)(ix) in order to overcome the currently outstanding grounds of rejection in the case.



**XI. APPENDIX C**

**RELATED PROCEEDINGS APPENDIX (37 C.F.R. §41.37(c)(1)(x))**

There is no related Appeal or Interference before the United States Patent and Trademark Office.